

PROTOCOL ON PRIVILEGES AND IMMUNITIES OF THE COMMON APPEAL COURT**(Protocol on Privileges and Immunities)***Article 1*

1. The premises of the Common Appeal Court, hereinafter referred to as 'the Court', shall be inviolable.

2. The authorities of a State in which the Court has its premises shall not enter those premises, except with the consent of the President of the Court or his representative. Such consent shall be assumed in case of fire or other disaster requiring prompt protective action.

3. Service of process at the premises of the Court and of any other procedural instruments relating to a cause of action against the Court shall not constitute breach of inviolability.

Article 2

The archives of the Court and any documents belonging to or held by it shall be inviolable.

Article 3

1. Within the scope of its official activities the Court shall have immunity from jurisdiction except:

- (a) to the extent that the Court shall have expressly waived such immunity in a particular case, given that the Court has the duty to waive such immunity where it is impeding the normal course of justice and that it is possible to dispense with such immunity without prejudicing the interests of the Court;
- (b) in the case of a civil action brought by a third party for damage resulting from an accident caused by a vehicle belonging to, or operated on behalf of, the Court, or in respect of a traffic offence involving such a vehicle;
- (c) in the event of the attachment, pursuant to a decision by the judicial authorities or by the administrative authorities referred to in Article Va of the Protocol annexed to the Convention of 27 September 1968 on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters as amended by the Convention of Accession of 9 October 1978, of the salaries and emoluments, including pensions, owed by the Court to a member or former member of its staff;
- (d) in the case of a civil action based on an obligation of the Court resulting from a contract, including a contract of employment concluded with a staff member;

(e) where the Court has instituted proceedings and the defendant brings a counter-action directly linked to the main action.

2. The official activities of the Court shall, for the purposes of this Protocol, be such as are strictly necessary for performance of the duties assigned to it by the Protocol on the Settlement of Litigation concerning the Infringement and Validity of Community Patents.

Article 4

1. The property and assets of the Court, wherever situated, shall be immune from any form of requisition, confiscation, expropriation, sequestration and execution unless the immunity of the Court is excluded by reason of a fact referred to in Article 3 (1) (a) to (e).

2. The property and assets of the Court shall also be immune from any form of administrative or provisional judicial constraint, except in so far as may be temporarily necessary in connection with the prevention and investigation of accidents involving vehicles belonging to or operated on behalf of the Court and except in so far as the immunity of the Court is excluded under Article 3 (1) (a) to (e).

Article 5

1. Within the scope of its official activities, the Court and its property and income shall be exempt from all direct taxes.

2. Where, for the exercise of its official activities, substantial purchases in the price of which taxes or duties are included are made by the Court, appropriate measures shall, whenever possible, be taken by the Contracting States to remit or reimburse to the Court the amount of such taxes or duties.

3. No exemption shall be accorded in respect of duties and taxes merely constituting charges for public utility services.

Article 6

Goods imported or exported by the Court for the exercise of its official activities shall be exempt from duties and charges on import or export, other than fees or taxes representing

services rendered, and from all prohibitions and restrictions on import or export.

Article 7

No exemption shall be granted under Articles 5 and 6 for the personal benefit of the judges, officials or other servants of the Court.

Article 8

1. Goods belonging to the Court which have been acquired or imported under Article 5 or Article 6 shall not be sold or given away except in accordance with conditions agreed to by the Contracting States which have granted the exemptions.

2. The transfer of goods and provision of services between the various buildings of the Court shall be exempt from charges or restrictions of any kind; where appropriate, the Contracting States shall take all the necessary measures to remit or reimburse the amount of such charges or to lift such restrictions.

Article 9

The transmission of publications by or to the Court shall not be restricted in any way.

Article 10

The Court may, without being subject to any control, regulations or financial moratorium:

- (a) receive and hold funds and foreign currency of any kind and have bank accounts in any of the currencies of the Member States of the European Communities or in European Currency Units;
- (b) freely transfer its funds and foreign currency from one Member State of the European Communities to another or to a non-member State.

Article 11

1. For its official communications and the transmission of all its documents, the Court shall enjoy in the territory of each Contracting State the treatment accorded by that State to the Court of Justice of the European Communities.

2. Official correspondence and other official communications of the Court shall not be subject to censorship.

Article 12

The Contracting States shall take all appropriate measures to facilitate the entry, stay and departure of judges, officials and other servants of the Court.

Article 13

1. The members of the Administrative Committee, their alternates, advisers and experts shall enjoy, while attending meetings of the Administrative Committee and of any body established by it, and in the course of their journeys to and from the place of meeting, the following privileges and immunities:

- (a) immunity from arrest or detention and from seizure of their personal luggage, except when found committing, attempting to commit, or just having committed an offence;
- (b) immunity from jurisdiction, even after the termination of their mission, in respect of acts, including words written and spoken, done by them in the exercise of their functions; this immunity shall not apply, however, in the case of a traffic offence committed by one of the persons referred to above, or in the case of damage caused by a vehicle belonging to or driven by such a person;
- (c) inviolability for all their official papers and documents;
- (d) the right to use codes and to receive documents or correspondence by special courier or sealed bag;
- (e) exemption for themselves and their spouses from all measures restricting entry and from aliens' registration formalities;
- (f) the same facilities in the matter of currency and exchange control as are accorded to the representatives of foreign Governments on temporary official missions.

2. Privileges and immunities are accorded to the persons referred to in paragraph 1, not for their personal advantage but in order to ensure complete independence in the exercise of their functions in connection with the Court. Consequently, a Contracting State has the duty to waive the immunity in all cases where, in the opinion of that State, such immunity would impede the course of justice and where it can be waived without prejudicing the purposes for which it was accorded.

Article 14

The judges, officials and other servants of the Court:

- (a) shall, even after their service has terminated, have immunity from jurisdiction in respect of acts, including words written and spoken, done in the exercise of their functions; this immunity shall not apply, however, in the case of a traffic offence committed by a judge, official or other servant of the Court, or in the case of damage caused by a vehicle belonging to or driven by a judge, official or other servant;
- (b) shall be exempt from all obligations in respect of military service;

- (c) shall enjoy inviolability for all their official papers and documents;
- (d) shall enjoy the same facilities as regards exemption from all measures restricting immigration and governing aliens' registration as are normally accorded to staff members of international organizations, as shall members of their families forming part of their household;
- (e) shall enjoy the same privileges in respect of exchange regulations as are normally accorded to the staff members of international organizations;
- (f) shall enjoy the same facilities as to repatriation as diplomatic agents in times of international crisis, as shall the members of their families forming part of their household;
- (g) shall have the right to import duty-free their furniture and personal effects at the time of first taking up their post in the State concerned and the right on the termination of their functions in that State to export free of duty their furniture and personal effects, subject to the conditions considered necessary by the Government of the State in whose territory the right is exercised and with the exception of property acquired in that State which is subject to an export prohibition therein.

Article 15

1. The persons referred to in Article 14 shall be subject to a tax for the benefit of the Court on salaries and emoluments paid by the Court, subject to the conditions and rules laid down by the Administrative Committee within a period of one year from the date of entry into force of the Agreement relating to Community Patents. From the date on which this tax is applied, such salaries and emoluments shall be exempt from national income tax. The Contracting States may, however, take into account the salaries and emoluments thus exempt when assessing the amount of tax to be applied to income from other sources.

2. Paragraph 1 shall not apply to pensions and annuities paid by the Court to former judges, officials or other servants of the Court.

Article 16

The Administrative Committee shall determine the categories of officials and other servants to whom the provisions of Article 14, in whole or in part, and Article 15 shall apply. The names, titles and addresses of the officials and other servants included in such categories and of the judges shall be communicated from time to time to the Contracting States.

Article 17

In the event of the Court establishing its own social security scheme, the Court, together with its judges, officials and other servants, shall be exempt from all compulsory contributions to national social security schemes, subject to the agreements made with the Contracting States in accordance with the provisions of Article 23.

Article 18

1. The privileges and immunities provided for in this Protocol are not designed to give personal advantage to judges, officials or other servants of the Court. They are provided solely to ensure, in all circumstances, the unimpeded functioning of the Court and the complete independence of the persons to whom they are accorded.

2. The Court, sitting in plenary session, has the duty to waive immunity where it considers that such immunity is impeding the normal course of justice and that it is possible to dispense with such immunity without prejudicing the interests of the Court.

Article 19

Where immunity has been waived and criminal proceedings are instituted against a judge, he shall be tried, in any of the Member States, only by the court competent to judge the members of the highest national judiciary.

Article 20

1. The Court shall cooperate at all times with the competent authorities of the Contracting States in order to facilitate the proper functioning of the process of justice, to ensure the observance of police regulations and regulations concerning public health, labour inspection or other similar national legislation, and to prevent any abuse of the privileges, immunities and facilities provided for in this Protocol.

2. The procedure of cooperation mentioned in paragraph 1 may be laid down in the complementary agreements referred to in Article 23.

Article 21

Each Contracting State retains the right to take all precautions necessary in the interests of its security.

Article 22

No Contracting State is obliged to extend the privileges and immunities referred to in Articles 13 and 14 (b), (e) and (g) to its own nationals or permanent residents.

Article 23

The Court may, on a decision of the Administrative Committee, conclude with one or more Contracting States complementary agreements to give effect to the provisions of this Protocol as regards such State or States, and may conclude other arrangements to ensure the efficient functioning of the Court and the safeguarding of its interests.